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ABSTRACT

This publication reports the results of a study of comparability data submitted by 80 of the nation's largest school districts. The study sought to determine the degree of school district compliance with USOE regulations implementing Title I of the Elementary and Secondary Education Act of 1965. Of the 80 schools, the study found that (1) 29.38 percent lacked comparability in the number of pupils per teacher, (2) 42.53 percent lacked comparability in the number of pupils per other certificated instructional staff, (3) 47.26 percent lacked comparability in the number of pupils per noncertificated instructional staff, (4) 34.23 percent lacked comparability in the expenditures per pupil for instructional salaries, and (5) 33.01 percent lacked comparability in the expenditures per pupil for other instructional costs. Recommendations for OE action are presented. Appendixes include suggestions for further research. (Appendixes B, C, D, and E may photograph poorly.) (JF)

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TITLE I COMPARABILITY:

A Preliminary Evaluation

A Report Prepared
by

THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

School Finance Project

EA 004 654

September, 1972

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Introduction

Title I of the Elementary and Secondary Education Act of 1965 is a major Federal program designed to provide extra or "compensatory" education funds to 7.5 million educationally disadvantaged students. Unfortunately, however, the poorer schools eligible to receive Title I funds were the same schools that generally receive a disproportionately low share of state and local funds, and states began using Title I funds for purposes of rectifying these preexisting inequities. This had the effect of frustrating Congress' purpose to appropriate "compensatory" funds.

In 1970, Congress reaffirmed its intention that Title I funds should be truly supplementary by enacting comparability requirements, when it stated that:

> A local education agency may receive a grant under [Title I] for any fiscal year only upon application therefor approved by the appropriate State educational agency, upon its determination (consistent with such basic criteria as the Commissioner may establish) that State and local funds will be used in the district of such agency to provide services in project areas which, taken as a whole, are at least comparable to services being provided in areas in such district which are not receiving funds under [Title I]. (Emphasis added.)[1/]

"Comparability" means quite simply that per-pupil expenditures and services procured from state and local revenue must generally be equal among all schools within a school district before the application of Title I funds. The comparability requirement is essential for insuring that Title I funds actually supplement state and local funds rather than supplant them. Congress specifically authorized the Office of Education, which administers Title I, to terminate funds if a school district failed to achieve comparability by July 1, 1972.

But now, more than two years after the enactment of 20 USC

[1/] 20 U.S.C. 241e(a)(3)(C).

241e and two months after the expiration of the July 1 deadline, remarkably little, if any, compliance with the comparability regulations has been achieved. As this report shows in more detail, the overwhelming number of school districts receiving Title I funds have taken no action to comply with comparability requirements, and few have plans to do so in the future. Moreover, the USOE has neither the capability nor the desire to enforce compliance with comparability requirements. As a consequence, millions of poor children throughout the country continue to be denied the compensatory benefits of Title I.

I. How the Comparability Requirements Work

Preliminary instructions to state departments of education concerning the comparability requirements were issued by the Office of Education on September 18, 1970 (see Appendix A).[2/] These

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[2/] Memorandum to Chief State School Officers: Advisory Statement on Development of Policy on Comparability, September 18, 1970.

instructions were modified slightly by the final comparability regulations which were formally promulgated on October 14, 1971 (see Appendix B).[3/] The instructions established a timetable for submitting comparability reports, outlined the responsibilities of the states in enforcing comparability, and explained the criteria required for demonstrating comparability. The timetable was as follows:

A. May 1, 1971	Local school districts had to submit comparability data for the 1969-70 school year. If the school district's report showed lack of comparability, the district had to file by May 1, 1971 a plan that would show how comparability would be achieved by June 30, 1972.[4/] Thus, school systems had two years to achieve compliance with the requirements.
B. Dec. 31, 1971	Local school districts had to submit comparability reports for the 1970-71 school year, and, if comparability was lacking the district must submit a plan to achieve comparability.
C. July 1, 1972	Local school districts had to submit comparability data for the 1971-72 school year, and a plan, if necessary, that would

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[3/] 36 Fed Reg 199, pp. 20016-20017, October 14, 1971 (Appendix B).

[4/] According to the regulations, the plan required of non-comparable LEA's is one that provides . . . "information with respect to projected budgets, staff assignments, and other pertinent matters showing that comparability will be achieved . . ." 45 CFR § 116.26 (d).

demonstrate that comparability had been achieved for the 1972-73 school year.

D. July 1, 1972

State education agencies (SEA's) must withhold Title I funds for the 1972-73 school year from local educational agencies, not in compliance with the comparability requirements in B. above.

The comparability standard required that each Title I school be comparable to the average of all non-Title I schools in the corresponding grade level in five areas:

1. Ratio of pupils to assigned certified classroom teachers;
2. Ratio of pupils to assigned other certified instructional staff;
3. Ratio of pupils to assigned non-certified instructional staff;
4. Expenditure per pupil for instructional salaries, exclusive of amounts paid on the basis of longevity;
5. Expenditures per pupil for other instructional costs.

If a school lacks comparability in only one area, it is non-comparable. Thus, Title I schools must demonstrate comparability in all five areas.

The comparability standard is achieved if each Title I school has

ratios for criteria 1, 2, and 3 which do not exceed 105% of the average ratio for the corresponding non-Title I schools and if the expenditures for criteria 4 and 5 are at least 95% of the average expenditures for the corresponding non-Title I schools.

II. The Scope of the Study

In order to determine whether the comparability requirements have been implemented by the Office of Education and by local school districts, the Lawyers' Committee for Civil Rights Under Law initiated an analysis of comparability data submitted by eighty of the nation's largest school districts.[5/] The purpose of this analysis was to answer the following questions:

1. Have local education agencies complied with the comparability requirements?
2. Have the state education agencies and the U.S. Office of Education taken adequate steps to enforce comparability?

[5/] The Lawyers' Committee actually requested from the U.S. Office of Education comparability data for the country's 100 largest districts, but U.S.O.E. did not have complete data for the remaining twenty districts.

Although there are over 16,000 school districts that have received Title I funds, the 100 largest school districts enroll over half of the country's public school children.

3. Do the comparability requirements permit adequate flexibility for school administration while insuring equitable treatment of pupils?

4. What are some of the problems encountered by school officials in implementing comparability?

With these questions in mind, the Lawyers' Committee analyzed the comparability reports from each of the eighty school districts to determine:

1. The extent to which local education agencies have achieved comparability: how many schools failed to meet the comparability standard; under which criteria did the schools fail to to meet the requirements;

2. The existence and sufficiency of plans submitted by local education agencies (LEA's) to correct instances of non-comparability in their schools;

3. The accuracy of the mathematics in the comparability data and plans submitted by LEA's;

4. The comments, if any, made by LEA administrators about the comparability requirements.

The Lawyers' Committee analysis was limited to the comparability data as submitted by the LEA's.[6/] No attempt was made to verify their data.

[6/] The analysis was based primarily on data for the 1970-71 school year, although in 24 cases the data were for the 1969-70 school year (see chart pp. 18-22).

III. Findings

A. Summary

Of the eighty school systems studied, seventy-nine (or 98.75%) had one or more non-comparable schools.[7/] One-fourth of these districts lacked comparability in 80% or more of their Title I schools. The one district that had a perfect record of comparability was Huntsville, Alabama. The worst district was Cincinnati, Ohio where 93% of its schools lacked comparability on one or more counts. The most frequently occurring lack of comparability was in the area of non-certified instructional staff. The least frequent was pupil-teacher ratio.

Allowing for the U.S.O.E. mandated 5% deviation, a breakdown

7/ It is worth noting that a number of districts included in this analysis have partially or completely reorganized their school assignments to accomplish desegregation since filing their comparability data. Thus, the comparability data may now be obsolete for these districts. The following school systems included in this analysis fall into this category: Hillsborough County, Fla.; Muskogee County and Chatham-Savannah, Ga.; Jefferson Parish, La.; Jackson, Miss.; Nashville, Tenn.; Richmond, Virginia Beach, and Norfolk, Va.; San Francisco, California ; Huntsville, Ala.; Mobile, Ala.; Palm Beach County, Fla.; Tulsa, Okla.; and Shelby County, Tenn.

of the non-comparable Title I schools according to the five comparability criteria is as follows:

- 29.38% lacked comparability in the number of pupils per teacher.
- 42.53% lacked comparability in the number of pupils per other certified instructional staff.
- 47.26% lacked comparability in the number of pupils per non-certified instructional staff.
- 34.23% lacked comparability in the expenditures per pupil for instructional salaries.
- 33.01 % lacked comparability in the expenditures per pupil for other instructional costs.

Plans to Achieve Comparability

While all but one district in the survey had some schools which lacked comparability, 58% of the school districts analyzed submitted no plan at all.[8/] Of the thirty-four districts that did submit plans, twenty-two had plans that specifically outlined the reallocation of personnel and funds which would make their non-comparable schools comparable. Twelve of the plans could hardly be considered even minimally

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8/ Some districts may have submitted plans to the state education agency, but, if so, these plans were not forwarded to the U. S. Office of Education.

compliant with the law. For example:

> Bibb County, Georgia: "At work sessions with the members of the Board this school term the School Board has expressed its interest to demonstrate comparability by May 1, 1972."
>
> Birmingham, Alabama: "It has always been the custom of the Birmingham Public Schools to have only one principal per elementary school."
>
> Houston, Texas: "The only commitment we feel we can make is to assure you that by whatever means are necessary the infractions as revealed by the quarterly data processing printout will be communicated to the appropriate administrative personnel and the comparability guidelines will be met."
>
> Virginia Beach, Virginia: "An attempt will be made by the Virginia Beach Public School system to reduce the teacher load in target schools."

B. Inadequacies in the Comparability Reports

Differences in Reporting

The comparability data submitted by the eighty districts was often deficient, disorganized, and erroneous.[9/] Only 27.50% of the

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[9/] One effect of the comparability law is that many school systems will be reporting information about their schools in a new manner. Prior to the comparability requirements, most school systems did not keep instructional cost information on a school-by-school basis. Thus the new requirements have meant that school systems have had to convert to a per-school budget. The fiscal year data analyzed in this study was that year in which school systems were converting to the per-school budget, and because it was a transitional year, the change in accounting procedures may have resulted in errors of reporting.

The statutory requirement for comparability became law in the spring of 1970. The law required that school districts must be comparable

districts (see column 10, Appendix A) used the comparability form recommended by the U.S. Office of Education in the comparability manual given to the states in October 1970. While some states recommended to the districts that they use the O.E. form, many states created their own forms. The result was that some reports were clear and complete, while others were either incomplete or cumbersome or both. The Georgia form, for example, was unduly cumbersome because it required that data for each Title I school be presented on a separate page.

While some forms listed each non-Title I school, most simply recorded their averages. A few districts listed all schools but calculated no averages. Some districts (e.g., Detroit and Boston) used computer forms; comparability reports from these systems were among the

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in the 1970-71 school year if they were to receive Title I funds for the 1972-73 school year. Thus, there was very little time for the school districts to correct non-comparable schools in time for the 1970-71 school year. Despite the shortness of time, however, the school districts could still comply with the law: If they failed to achieve comparability in the 1970-71 school year, the comparability regulations provided that they would be entitled to funds in the summer of 1972 if they could demonstrate that they would achieve comparability during the 1972-73 school year.

easiest to analyze.

It is apparent that there has been a lack of communication between local, state and federal authorities on the subject of comparability.[10/] Indeed, it appears that only one U.S. Office of Education employee, out of nearly 4,000, is at all involved with comparability on a day-to-day basis--and he is not even working full-time in this area.

Which Schools Should be Compared?

Another major area of confusion concerned the ways in which

10/ Some of the problems which school districts encountered in reporting comparability statistics are dealt with in detail by the HEW audit reports on the comparability data of eleven school districts.

The HEW audits were conducted between September 1971 and April 1972 on the following eleven school districts: Baltimore, Chicago, Hartford, Kansas City (Mo.), Louisville, Miami, New York, Oakland, St. Louis, San Diego, Yuba City (Calif.). The individual audits have been compiled by the HEW Audit Agency into a summary report, which will be formally released to the public sometime in September 1972. The principal difference between the instant study and the HEW audits is that the former assumes, for the purposes of argument, that the comparability data is accurate, while the latter does not. The results of the HEW comparability audits (done on 1969-70 data) indicates that not only is comparability lacking in most of the eleven districts, but, more importantly, the data submitted by the LEA's are generally unreliable, invalid, and, frequently, unverifiable.

schools should be grouped for comparison. The O.E. guidelines for comparability issued on September 18, 1970 provided that Title I schools should be compared to non-Title I schools "serving the same grade span." Most districts interpreted this to mean that elementary schools should be grouped and compared; junior high schools should be grouped and compared, etc. Indeed, that was precisely the example used by the Office of Education in its September 18, 1970 comparability policy statement (see Appendix A, p. 7).

However, some districts interpreted this requirement quite literally and only compared schools with identical grade spans. For example, in Detroit, K through 3 schools were compared only with schools having grades K through 3. This narrower type of grouping inevitably resulted in fewer non-comparable schools, because the schools were more similar within each grouping.[11/]

[11/] Although in the abstract it may seem sensible to make groupings of "similar" schools, this can be carried to an extreme. For example, in Detroit a grouping of K through 3 schools with exactly 500 enrollment would probably contain no more than one school. Obviously, a grouping which has only one school, must be comparable.

Still other districts lumped schools by grade level and by size (i.e., enrollments under 500, 500-1,000, etc.) In Virginia, for example, districts compared categories of small, medium, and large within each type of school. Detailed breakdowns by size and/or grade may be reasonable for large districts, where, unlike in small districts, it is possible for the purposes of comparison to have a substantial number of schools within any given size or grade classification. Ironically, some large school districts grouped schools in the most gross ways. In Philadelphia, for example, no grouping of any kind was attempted, which may explain in part why that district had the rather alarming 86% rate of non-comparability.

C. Reactions of Local Administrations to Comparability

Many districts commented on the new comparability requirements in their plans. For example, one Nebraska administrator offered this observation:

> "Nebraska school districts object to comparability data being a part of public information. The implication possibilities are a threat to the local educational agencies."

The same administrator reflected the lack of guidance on comparability offered to him by state and federal education officials when he noted that:

> "We do not have a lucid grasp of what comparability entails."

Many comments were made on how the comparability requirements impinge on the flexibility of school administrators to provide quality education. The Los Angeles Title I Coordinator's remarks illustrate this point well:

> " . . . . The Los Angeles Unified School District believes that the need to demonstrate comparability seriously inhibits the flexibility which the District has attempted to provide to local schools . . . flexibility will necessarily result in some schools being indicated as non-comparable simply because the school had determined that resources should be allocated in a manner which may not conform to the enrollment of the average of the District. . . the data produced through comparability studies is misleading to the state and to the community . . ."

A related comment was offered by the St. Louis Title I

Coordinator:

> "Several comments may be in order. We think that a 5% margin of comparability may be unrealistic for a large school system. The variances are greater than that within our non-Title I school group. Equality of needs does not exist, and it is not possible to individualize instruction to meet individual needs and at the same time treat each school exactly the same. A 10% margin would be a much more realistic goal. We have been actively engaged in decentralizing administration and involving the community; yet to control all expenditures within a 5% margin requires authoritarian control form a central office.
>
> "Moreover, an austerity program to balance the school budget this year forced us to operate with a minimal staff of non-certificated employees and to reduce the number of other certificated personnel. These cuts were made on a half-time or full-time basis depending on the size of the school; this occasionally resulted in a comparability deficit of two or three tenths of a person. When you are talking about a total of two or three staff members, this is a rather fine distinction to require a school district to make."

Other administrators were concerned that the comparability regulations penalized school principals who kept costs down in their schools. Take this comment from Rochester:

> "In practice, however, some schools ask for more materials than do others. In view of the district's current financial plight, it is not reasonable to condemn by non-comparability those schools who are more austerity-oriented than are others. By the same token, innovative instruction should not be hampered by reduction of resources to a lowest common denominator. Within these mutually exclusive parameters, greater attempts will be made to monitor these costs so as to prevent or remove disparities.

Finally, one administrator appeared to be so upset about Title I guidelines in general that he could not resist making comments that went beyond comparability:

> "The attached plan is the Fort Worth Independent School District plan to meet comparability requirements under Title I of the Elementary and Secondary Education Act unless the federal Fifth Circuit Court of Appeals in New Orleans changes our local federal Court order for integration.
>
> "We have two ways to change our current excellent plan in order to conform to the illogical and stupid guidelines of concentration of effort in very few schools: 1) employ additional teachers and aides at an estimated $206,000.00 expense to local tax costs, or 2) shift teachers and aides to the indicated schools. In the attached appendix, we propose to shift the teachers and aides in as much as we do not have the local revenue available.
>
> "May I again protest this illogical and stupid decision which requires that we drop help to eligible, educationally deprived children in order to concentrate on a few schools and communities."

A summary chart of the eighty district study appears on the next five pages.

District Name	Number of Title I Schools	Number of Title I Schools Not Comparable	Percentage of Schools Not Comparable	Criteria 1: Number of Pupils per Teacher	Criteria 2: Number of Pupils per other Certified Instructional Staff	Criteria 3: Number of Pupils per Other Non-certified Instructional Staff	Criteria 4: Expenditures on Instructional Salaries per Pupil (less Longevity Pay)	Criteria 5: Expense per Pupil for Other Instructional Costs	Criteria 6: Expenditures on Instructional Salaries per Pupil (including Longevity Pay)	Used Comparability Form Recommended by U.S. Office of Education	Submitted Plan to Correct Non-Comparable Schools
ALABAMA											
Birmingham	68	25	37%	0	24	24	ND	0	8	no	no
Huntsville	7	0	0%	0	0	0	0	0	0	no	no
Mobile Co.	62	38	61%	2	18	26	1	1	13	no	no
Montgomery	33	5	15%	0	4	3	ND	0	0	no	no
CALIFORNIA											
Fresno*	8	7	88%	0	1	7	0	0	ND	no	yes
Garden Grove*	6	5	83%	1	5	5	4	0	ND	no	**yes
Long Beach*	5	1	20%	0	0	1	0	0	ND	no	**yes
Los Angeles*	65	38	58%	0	11	26	1	6	ND	no	no
Mount Diablo*	4	1	25%	0	0	0	1	0	ND	no	no
Oakland*	10	3	30%	0	2	3	0	0	ND	no	**yes
Richmond*	5	4	80%	0	1	0	0	4	ND	no	yes
San Diego*	20	9	45%	2	2	7	1	3	ND	no	yes
San Francisco*	10	1	10%	0	0	1	0	0	ND	no	no
San Juan*	5	4	80%	0	3	3	4	0	ND	no	no
COLORADO											
Denver	27	11	41%	2	6	5	3	2	4	yes	no
Jefferson Co.	8	7	88%	0	3	5	2	5	1	yes	no
FLORIDA											
Dade Co. (Miami)	51	17	33%	7	9	17	ND	ND	ND	no	no
Escambia (Pensacola)	32	22	69%	10	13	12	ND	ND	ND	no	no
Hillsborough (Tampa)	51	3	6%	2	1	ND	ND	ND	ND	no	no
Orange (Orlando)	46	9	20%	4	5	4	ND	ND	ND	no	no
Palm Beach	26	12	46%	4	8	4	ND	ND	ND	no	no

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FLORIDA (Cont.)											
Polk (Bartow)	60	40		6	12	16	ND	ND	ND	no	no
GEORGIA											
Bibb	28	11	39%	3	3	2	4	0	8	no	yes
Chatham	26	13	50%	7	10	7	7	0	ND	no	**yes
Cobb	6	2	33%	0	1	1	0	2	0	no	**yes
Dekalb	31	19	61%	0	4	19	1	0	0	no	no
Fulton	20	12	60%	1	2	4	2	5	5	no	**yes
Muscogee	32	7	22%	0	3	1	1	0	4	no	yes
ILLINOIS											
Chicago*°	370	180	49%	103	25	25	142	0	164	no	no
Rockford*	16	9	56%	1	4	4	3	3	5	no	no
INDIANA											
Indianapolis°	22	11	50%	1	2	8	2	0	5	yes	**yes
IOWA											
Des Moines	18	7	39%	2	0	6	1	1	1	yes	no
KANSAS											
Kansas City*	25	14	56%	4	10	ND	3	7	6	yes	no
Wichita*°	35	15	43%	3	6	8	7	0	5	yes	no
KENTUCKY											
Fayette Co.	20	7	35%	1	1	1	2	5	2	yes	**yes
Louisville	31	25	81%	1	19	21	0	8	6	yes	no
LOUISIANA											
Calcasieu	27	22	81%	5	13	13	3	0	6	yes	no
Jefferson	49	29	59%	5	8	9	8	15	9	yes	no

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LOUISIANA (cont.)											
Orleans	94	79	84%	43	57	35	23	39	47	no	no
MASSACHUSETTS											
Boston*	43	23	53%	17	0	0	13	7	ND	no	no
MICHIGAN											
Detroit	126	108	86%	42	41	44	80	43	79	no	no
Flint	22	11	50%	2	7	6	2	5	0	no	**yes
Lansing	22	18	82%	6	9	10	4	0	7	no	yes
MINNESOTA											
Minneapolis	33	5	15%	1	1	1	2	0	3	no	yes
St. Paul	39	12	31%	3	6	3	2	4	3	no	**yes
MISSISSIPPI											
Jackson	24	10	42%	8	5	2	8	4	6	no	no
MISSOURI											
St. Louis	55	24	44%	7	10	5	11	2	18	yes	**yes
NEBRASKA											
Omaha	19	4	21%	0	1	1	1	2	0	no	no
NEVADA											
Clark Co.	12	6	50%	2	2	4	1	2	1	yes	no
NEW JERSEY											
Newark*	57	51	89%	8	19	42	20	25	24	yes	no
NEW YORK											
Rochester	24	21	88%	10	4	9	7	10	12	yes	yes
OHIO											
Akron*	28	5	18%	1	0	0	1	0	4	yes	no

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OHIO (cont.)											
Cincinnati*	15	14	93%	0	4	2	0	13	0	yes	no
Cleveland*	74	23	31%	10	7	4	9	1	13	yes	**yes
Columbus*	48	24	50%	4	10	10	1	5	0	yes	yes
Dayton*	21	17	81%	3	6	11	0	10	2	yes	**yes
Toledo*	32	24	75%	4	22	1	4	2	8	yes	**yes
OKLAHOMA											
Tulsa	37	21	57%	2	8	10	2	9	6	no	no
OREGON											
Portland*	22	5	23%	0	2	5	1	0	ND	yes	yes
PENNSYLVANIA											
Philadelphia	167	144	86%	63	100	105	78	118	100	no	no
SOUTH CAROLINA											
Charleston	32	29	91%	10	5	12	10	20	12	no	yes
Greenville	51	37	73%	1	12	34	2	2	3	no	**yes
TENNESSEE											
Memphis	59	51	86%	0	12	0	10	45	0	no	**yes
Shelby Co.	25	3	12%	2	0	0	2	1	0	no	no
TEXAS											
Austin	20	2	10%	0	0	2	0	1	0	no	**yes
Corpus Christi	20	11	55%	2	10	9	3	0	0	no	**yes
Dallas	36	7	19%	4	1	2	4	0	0	no	yes
Fort Worth	41	26	63%	2	9	13	3	20	0	no	**yes
Houston	46	39	85%	0	6	23	12	37	0	no	yes
Pasadena	10	1	10%	0	1	1	0	0	0	no	**yes

District Name	Number of Title I Schools	Number of Title I Schools Not Comparable	Percentage of Schools Not Comparable	Criteria 1: Number of Pupils per Teacher	Criteria 2: Number of Pupils per other Certified Instructional Staff	Criteria 3: Number of Pupils per other Non-certified Instructional Staff	Criteria 4: Expenditures on Instructional Salaries per Pupil (less Longevity Pay)	Criteria 5: Expense per Pupil for other Instructional Costs	Criteria 6: Expenditures on Instructional Salaries per Pupil (including Longevity Pay)	Used Comparability Reconmended by U.S. Office of Education	Submitted Plan to Correct Non-Comparable Schools
[redacted] (cont.)											
San Antonio	67	48	72%	17	30	33	14	12	0	no	**yes
Spring Branch	6	2	33%	2	0	0	2	2	0	no	yes
Ysleta	15	9	60%	1	8	6	2	3	0	no	yes
[redacted]											
Salt Lake City	9	4	44%	2	1	1	1	3	2	yes	no
[redacted]											
Fairfax	20	10	50%	1	6	1	2	3	7	no	no
Norfolk*	30	18	60%	7	13	13	4	6	4	no	no
Richmond	11	7	64%	4	5	2	2	2	4	no	no
Virginia Beach	12	11	92%	9	7	2	10	ND	7	no	yes
[redacted]											
Granite	13	11	85%	1	1	5	0	8	0	yes	no
[redacted]											
Tacoma	12	7	58%	0	5	2	1	1	0	no	no
TOTALS	2,914	1,627	55.83%	478	692	769	557	537	624	23	37
				29.38%	42.53%	47.26%	33.01%	33.01%	38.35%	yes	yes

ND - No Data
° - Including special schools

* - Analysis based on 1969-1970 data
** - These plans included information concerning "projected budgets, staff assignments, and other pertinent matters showing that comparability will be achieved by the beginning of [the 1972-73 school] year," as required by the U.S. Office of Education regulations on comparability.

IV. Enforcement Activities of the U.S. Office of Education

A. Before July 1, 1972

Following the date of passage of the comparability amendments to the Title I legislation in April 1972, the U.S. Office of Education has taken the following steps to acquaint State Departments of Education with the comparability requirements.

On September 18, 1970, a nine-page typed memorandum signed by T. H. Bell, Acting U.S. Commissioner of Education and entitled "Advisory Statement on Development of Policy on Comparability," was sent to each chief state school officer (a copy is attached as Appendix A).

This memorandum, which explained the concept of comparability, appears to have served as the basis for U.S.O.E.'s regulations which first appeared as "proposed rule making" in the Federal Register on April 27, 197' and were formally adopted and went into effect on October

14, 1971 when they again appeared in the Federal Register (the October 14th regulations are attached as Appendix B).

During October 1970, workshops were held by U.S.O.E. in which the comparability requirements were discussed and a "draft" manual on comparability was distributed (a copy of the manual is attached as Appendix C). Although a copy of this manual should have been distributed to all chief state school officers with the recommendation to distribute it to all of their LEA's, it is not clear whether this was done.

A memorandum, dated January 4, 1972, signed by Thomas J. Burns (Acting Associate Commissioner of Elementary and Secondary Education), and entitled "Report on ESEA Title I Comparability Requirements" was sent to each chief state school officer (the memo is attached as Appendix D). This memo did three things:

- It informed the LEA's that the comparability guidelines in the September 18, 1970 memo had been superseded by the

October 14, 1971 regulations.

- It requested the LEA's to inform the Office of Education as to the number of districts that were non-comparable and the number of non-comparable districts that were required to submit a plan showing how they would achieve comparability by the 1972-73 school year.

- It requested that the LEA's send to the U.S. Office of Education by February 15, 1972 the 1970-71 comparability reports and plans for a selected number of districts (i.e., approximately 500 LEA's throughout the country).[12]

On June 14, 1972 Commissioner Marland wrote a letter (attached as Appendix E) to the chief state school officers reminding them that July 1, 1972 was the date by which all LEA's had to demonstrate either that their schools were comparable in 1970-71 and that they would remain so or, failing comparability for 1970-71, that they would be comparable in the forthcoming school year (1972-73).

In addition to these formal actions directed toward all LEA's, the U.S. Office of Education has been involved in numerous written and oral communications with individual LEA's dealing with particular questions

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[12] The list was drawn from the nationally stratified sample of 830 school districts which appeared in the Consolidated Program Information Report published by the "Belmont Task Force."

of how the comparability requirements are to apply.

B. After July 1, 1972

The comparability amendments provide that no LEA may qualify for Title I funds after July 1, 1972 if its state agency has determined that the LEA has not made satisfactory assurances that its schools will be comparable during the 1972-73 school year (20 U.S.C. §§ 241 (e) (a) (3) (c)). Prior to July 1, 1972 U.S.O.E. officials were virtually silent on the subject of how and whether they would enforce this requirement: they only talked about how comparability was to work. However, HEW Secretary Richardson spoke clearly to this point when on March 17, 1972 he stated: "We propose and are now enforcing the comparability requirements."[13/]

It appears that Secretary Richardson may have spoken prematurely. Neither before nor since his statement has U.S.O.E. made

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[13/] Transcript of White House Press Conference, March 17, 1972, p. 11.

any move to terminate or to suggest the termination of funds to non-comparable districts. As of the writing of this report U.S.O.E. had not determined which, if any, LEA's throughout the country were non-comparable for the base year 1970-71. Indeed one might believe, based on U.S.O.E. public remarks, that all the districts in the country were comparable. In the August issue of the American Association of School Administrators' publication, "The School Administrator," it was reported, based on a July 21, 1972 letter from U.S.O.E.'s Commissioner, Sidney Marland, to AASA's Director, Paul Salmon, that:

> "Approximately 80% of the [LEA] reports showed 'prima facie' comparability. The remaining 20% of the districts provided plans to achieve comparability status that appeared acceptable to the O.E. bureau."[14]

Such a statement seems strikingly at odds with the eighty district analysis done in this report. Instead of 80% of the districts being comparable, 98.75% of the districts are prima facie non-comparable.

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[14] The School Administrator, August 1972, p. 3.

Instead of finding that 100% of the districts which, according to O.E. were non-comparable as of 1970-71 but would be comparable by 1972-73, the instant report found that over half (46 out of 80) of the districts could not be comparable by 1972-73, since they had not even prepared plans to achieve comparability. In short, according to our analysis of the same data that was available to U.S.O.E., we find that non-comparable schools can be found in nearly every school district, whereas U.S.O.E. does not seem to have found any non-comparability.

The history of U.S.O.E. enforcement of Title I requirements is one of pervasive inaction.[15/] It appears this trend will not be altered in its administration of the comparability requirements.

[15/] See statement of Phyllis McClure before the Black Caucus Hearings on Government Lawlessness, June 29, 1972. See also HEW Audit Agency, "Report on the Management of Titles I, II, III, and V of ESEA: 1969-1970," September 17, 1971, 28 pp. mimeographed.

RECOMMENDATIONS

- We recommend that the U.S.O.E. should contact all SEA's immediately and request them either to correct all non-comparable districts or to withhold Title I funds from those districts. Furthermore, if the SEA's refuse to comply with this request, we we recommend that U.S.O.E. should terminate that portion of the 1972-73 Title I funds for those states which would otherwise be distributed to the non-comparable districts.

- We recommend that the U.S.O.E. should increase substantially the number of its employees who are working on the enforcement of the comparability requirements.

- We recommend that the U.S.O.E. should improve and speed up its own internal auditing procedures for determining which districts are non-comparable.

- We recommend that a standardized comparability form be developed by U.S.O.E. and that this form be used uniformly by all LEA's. (The form should be of two basic types: manual and computer generated.)

- We recommend that the comparability reports prepared by LEA's should be included in or made a part of their project applications and that these reports should be given to all members of the LEA's parent advisory council.

- We recommend that U.S.O.E. should develop a standardized form to be used by all LEA's when submitting a plan to correct non-comparable schools.

- We recommend the U.S.O.E. increase substantially its technical support to the LEA's who need assistance in the preparation of plans to correct non-comparable schools. Similarly, we recommend that U.S.O.E. should encourage SEA's to increase substantially their technical support to LEA's in the preparation of these plans.

- We recommend that U.S.O.E. should amend its comparability regulations to require that, within any given comparability grouping, no school can be more than 5% deviant from any other school, i.e., that the non-Title I school average be eliminated (for a fuller explanation of this recommendation, see Appendix F, p. 8).

- We recommend that data be provided for both Title I and non-Title I schools. This would encourage honest reporting and would facilitate comparability audits.

- We recommend that each district superintendent be required to sign a statement that the information in his report is true and correct, as is the case already in many states.

- We recommend that criteria for breaking down schools into grade levels of elementary, junior high, and senior high schools, be established.

- We recommend that the research described in Appendix F be undertaken immediately.

APPENDIX A

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF EDUCATION
WASHINGTON, D.C. 20202

SEP 18 1970

Our Reference: ESEA Title I
DCE/OD

MEMORANDUM TO CHIEF STATE SCHOOL OFFICERS

Subject: Advisory Statement on Development of Policy on Comparability

Prior to the passage of P.L. 91-230 (the 1970 amendments to the Elementary and Secondary Education Act), Program Guide #57 was issued to clarify the requirements for achieving comparability. It is the purpose of this memorandum, which will supersede Program Guide #57 following promulgation of forthcoming regulations, to inform you of the revisions in the comparability policy, pursuant to Section 109 of P.L. 91-230.

Briefly, P.L. 91-230 and this policy statement differ from provisions of Program Guide #57 in the following ways:

1. Section 109 of P.L. 91-230 requires a report on comparability on or before July 1, 1971. This policy statement recommends that local educational agencies submit their report to their State educational agency by May 1, 1971, in order that such data may be considered in reviewing project applications. Starting with applications for programs to be carried out during the 1971-72 school year, local educational agencies whose reports indicate a lack of comparability shall project staff assignments and budgets as they relate to the comparability criteria described below.

2. Section 109 of P.L. 91-230 provides that funds may not be withheld from a local educational agency for non-compliance with the comparability clause until after July 1, 1972.

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3. Section 109 of P.L. 91-230 provides that services, taken as a whole, for each project area in a district must be at least comparable to services being provided in areas of that district which are not receiving Title I funds. Consequently, this policy statement does not provide the option given States in Program Guide #57 on reporting either all instructional expenses (Criterion B) or expenses for instructional salaries only (Criterion C).

4. This policy statement includes a special provision not contained in Program Guide #57. Pay for longevity (years of teaching) is not considered a factor in determining comparability.

5. This policy statement contains a special provision whereby a State educational agency may choose not to require the reporting of instructional expenditures from districts receiving small Title I allotments. Districts with only one school serving the same grade span (e.g., primary, intermediate, secondary), are not required to submit any data.

6. This policy statement recommends the following timetable:

January 1, 1971	Deadline for State educational agency to submit for approval by the Commissioner any comparability criteria it deems appropriate beyond those minimum criteria described in this policy statement. For subsequent years, additions or amendments to State-developed criteria may be submitted for approval at any time but may not be implemented unless approved.
May 1, 1971	Recommended deadline for local educational agency to submit to the State educational agency data on comparability for the 1969-70 school year. If such data does not demonstrate comparability for the period reported, the local educational agency shall submit, in addition, a plan indicating how comparability will be achieved no later than June 30, 1972.

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December 31, 1971	Recommended deadline for local educational agency to submit to the State educational agency a report containing comparability data for the 1970-71 school year. Such data will be considered during the Spring 1972 project application review period.
Date of submission of Title I application, Spring 1972 and each Spring thereafter	Local educational agency submits to the State educational agency its application for projects to be conducted during the 1972-73 school year. Where data submitted by December 31, 1971, indicate comparability, the application shall contain an assurance that such comparability will be maintained. Where such data indicate lack of comparability, the application will include projected staff assignments and budgets as they relate to comparability criteria and an assurance that such projected staff assignments and budgets will be maintained. This procedure will be repeated in subsequent annual applications.
July 1, 1972	The State educational agency may withhold funds from a local educational agency which is not in compliance with comparability regulations.
December 31, 1972 and each December 31 thereafter	Recommended annual deadline for report of actual data for school year which ends in that calendar year. (E.g., by December 31, 1972, data for the 1971-72 school year should be submitted.)

What Comparability Means

Title I funds must not be used to supplant State and local funds which are already being expended for public educational programs and services in the project areas or which would be expended in those areas if the services were comparable to those for non-project areas. Within a district, instructional services provided with State and local funds1/ for children

1/ For the purpose of this policy statement regarding comparability, funds provided under P.L. 81-874 will be considered the same as State and local funds in determining local expenditure.

in project areas must be comparable to those services provided for children in non-project areas. Services that are already available or that will be made available to children in the non-project areas must be provided on at least an equal basis in the project areas with State and local funds.

Responsibilities of State Educational Agencies for Achieving Comparability

For projects which will be carried out after June 30, 1972, the State educational agency shall determine that, during the project period, instructional programs and services supported by State and local funds at each school of the local educational agency serving a Title I project area will be superior or equal to those programs and services at the schools of that agency which are not receiving Title I funds.

1. State responsibilities with respect to local educational agencies.

   a. Reports

      In order to determine a district's compliance with this requirement, the State educational agency shall require that each local educational agency submit a report containing data on comparability by the recommended deadline of May 1, 1971. If such data does not affirmatively demonstrate to the State educational agency that a comparability of services provided with State and local funds currently exists in the school district between project and non-project areas, the local educational agency shall also submit by May 1, 1971, a plan to achieve such comparability no later than June 30, 1972.

      This first report or plan should provide information for each school in the district, based on data from the 1969-70 school year. State educational agencies are responsible for determining whether the comparability data or plan to achieve comparability meets Federal and State requirements. Subsequent annual reports will be submitted by a date which the State educational agency will determine but which is recommended to be no later than the end of the calendar year in which the school year ends. This will ensure that data from the past school year are available during the spring period when project applications for the upcoming school year are reviewed.

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In addition, local educational agencies will submit with each Title I application for the period beyond June 30, 1972, the following as appropriate:

Where actual data for the second fiscal year preceding the period to be covered by the application indicated comparability, an assurance will be made that such comparability will be maintained. For instance, for a fiscal year 1973 application, fiscal year 1971 data will be used. Where such data indicates a lack of comparability, the application shall include projected staff assignments and budgets with an assurance that such projections will be maintained.

The State educational agency need not require reports from local educational agencies which have only one school serving the grade span at which it provides Title I services. Agencies with schools having Title I allocations of less than $50,000, but which have at least one non-Title I school serving the same grade span shall report only on staff assignments (i.e., average number of assigned certified classroom teachers, assigned other certified instructional staff, assigned non-certified instructional staff, and average daily membership) and must submit an assurance of comparability.

b. Compliance

For any period ending after June 30, 1972, the State educational agency shall withhold or defer application approval or payment of funds if a local educational agency fails to file necessary data assurances and projections as previously defined. Such action will be taken only after appropriate notice and an opportunity for a hearing as required by the Title I regulations.

c. Audit

State educational agencies shall perform such reviews and audits as may be necessary to ensure that the local educational agency correctly represents the instructional services provided at its schools.

d. Expenses

The State educational agency may, where reasonable and necessary, allow a local educational agency to use Title I funds to cover reasonable costs of establishing record-keeping procedures to meet reporting requirements.

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2. State responsibilities with respect to the Federal Government.

a. Reports

Each State educational agency shall report to the Commissioner such information as he may request regarding the compliance of local educational agencies with comparability requirements.

b. Development of criteria

A State educational agency may establish comparability criteria beyond those minimum criteria described below. Initial State-developed criteria must be submitted to the Commissioner for approval by January 1, 1971.

Criteria for Demonstrating Comparability

The comparability requirements issued by a State educational agency to local educational agencies under its jurisdiction shall contain, at a minimum, the following data for each school included in the project application and the same average data for non-project area schools by corresponding grade span:

1. Average number of assigned certified classroom teachers.
2. Average number of assigned other certified instructional staff.
3. Average number of assigned non-certified instructional staff.
4. Amounts expended for instructional salaries (including amounts paid for step increases or other increases for length of service).
5. The amount included in expenses for instructional salaries which was paid solely because of length of service without regard to the quality of work.
6. Expenses incurred for other instructional costs (textbooks, library books, audio-visual materials, and other teaching supplies).
7. Average daily membership.
8. Such other data as the State educational agency may require.

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The State educational agency shall base its determination of compliance with the comparability requirement on:

1. The ratio of pupils to assigned certified classroom teachers;

2. The ratio of pupils to assigned other certified instructional staff;

3. The ratio of pupils to assigned non-certified instructional staff;

4. The expense per pupil for instructional salaries, less amounts paid solely on the basis of longevity; and

5. The expense per pupil for other instructional costs.

The local educational agency's Title I schools must have equal or lower ratios and equal or higher expenditures than the corresponding averages for its non-Title I schools serving the same grade span (e.g., all elementary schools, all junior high schools, all high schools). Ratios and expenditures for each Title I school shall be considered "equal" to the averages for non-project area schools if they are within five percent of those averages in each category.

Criteria for Meeting Supplementing and Non-Supplanting Requirement

The State educational agency shall find a local educational agency in compliance with the requirement against supplanting if the local agency either:

1. Does not use Title I funds to support a service which has been supported previously by funds from State or local sources, or

2. Establishes, with respect to funds from State and local sources, that both the per pupil expenditure for instructional services and the proportion of expenditures for instructional services (calculated on a per pupil basis) spent at the schools serving its Title I project areas will be maintained at levels at least equal to the levels which prevailed before State and local support for the service to be supported by Title I funds was discontinued.

Each State educational agency shall require a local educational agency to submit with its Title I application:

1. A factual description of the services provided with funds from State and local sources at both its Title I and non-Title I schools that are similar to those which it proposes to support with Title I funds; and

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2. Either a statement that none of the services to be supported with Title I funds have in the past been supported by funds from State or local sources, or such information as the State educational agency may require in order to determine that the local educational agency is maintaining its prior level of effort at the Title I schools.

Each State educational agency will take any necessary action, including the routine monitoring of activities of local educational agencies and investigations in response to complaints, to determine if its local educational agencies are complying with the supplementing and non-supplanting requirement.

Points of Clarification and Definitions for Criteria on Comparability, Supplementing, and Supplanting

1. Funds from State and local sources include all funds which the local educational agency receives from public sources within its State.

2. Instructional salaries include the salaries paid instructional staff directly and the indirect payroll expenses incurred by a local educational agency because of the employment of an instructional staff member. This definition does not include amounts paid for longevity.

3. Instructional services include the services of instructional staff members (principals, consultants, supervisors, teachers, school librarians, audiovisual, guidance, psychological, and television instructional personnel, secretarial and clerical assistants, and paraprofessional staff, such as teacher aides and student teachers) and the provision of textbooks, school libraries, audiovisual materials, and teaching supplies.

4. Non-Title I schools are the schools of a local educational agency which serve attendance areas not receiving Title I funds.

5. Title I schools are the schools which serve attendance areas designated by the local educational agency as project areas to receive Title I services. Private schools whose children participate in Title I activities are not included.

6. The State educational agency may wish to consider in its criteria the differences between small and large schools within a district. There may be a variance in per pupil instructional expenditures according to size of school.

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7. To be eligible for Title I funding of summer sessions, the local educational agency must demonstrate that its project area schools were comparable to those in non-project areas during the second previous school year.

T. H. Bell
Acting U.S. Commissioner of Education

Copies to: State Title I Coordinators, ESEA

APPENDIX B

Title 45—PUBLIC WELFARE

Chapter I—Office of Education, Department of Health, Education, and Welfare

PART 116—FINANCIAL ASSISTANCE TO MEET THE SPECIAL EDUCATIONAL NEEDS OF EDUCATIONALLY DEPRIVED CHILDREN

Miscellaneous Amendments

Notice of proposed rule making was published in the FEDERAL REGISTER on April 27 and, with certain corrections, on May 4, 1971, setting forth certain requirements and provisions for programs under title I of the Elementary and Secondary Education Act of 1965. Comments were received with respect to public information, parental involvement, and bonus pay for teachers (§ 116.17, paragraphs (n), (o), and (p)) and on the requirement for comparability of State and local funded services in title I schools with those in nontitle I schools (§ 116.26). Following the review of the comments (summarized below) the following changes were made:

Summary of changes. 1. The requirements in § 116.17(n) concerning the furnishing of copies of project documents have been clarified. The provision now states specifically that educational agencies may provide such copies free of charge and that any charges for such copies shall not exceed the costs actually incurred and not covered by title I funds.

2. The role of State educational agencies in administering the provisions of § 116.17, paragraphs (o) (1) and (2) has been clarified by the addition of paragraph (o)(3). This new paragraph is intended to make clear to State educational agencies that they may add such requirements as may be reasonably necessary to implement the provisions of § 116.17(o) (1) and (2).

3. The provisions of § 116.26 have been amended in paragraph (d) so that local educational agencies are not required to take any action to decrease the ratio of pupils to professional staff other than teachers or of pupils to noncertified instructional staff where the addition of less than the equivalent of one full-time staff member is required to achieve comparability with respect to either of those ratios.

Summary of comments—1. *Public information.* Commenters on § 116.17(n) emphasized the possibility that notwithstanding the limitations in the rule with respect to charges for copies of documents local educational agencies might charge excessively, thus preventing poor parents from securing the documents they need in order to understand the local title I program. They recommended that copies be made available free of charge. Objections were raised to the proposed rule on the grounds that it could be interpreted as requiring the assessment of charges of project documents and that the amounts charged could be recovered both from parties requesting copies and from title I funds. The change indicated above is intended to remove the cause for both of those objections. Also, while charges may still be made for copies of documents it should be noted that the subject paragraph requires a positive dissemination program and the following paragraph (§ 116.17(o)) requires that parent councils be given such documents free of charge.

2. *Parental involvement.* Comments on the rule on parental involvement reflect two opposing points of view. One group of commenters requested that requirements be added for the election of parent councils, for councils to be formed at each title I school, for representation on the council from all eligible areas, and for a requirement that the State educational agency respond specifically to any objection raised by the parent council to a proposed project. Although those suggestions were not adopted, a few clarifying remarks are in order concerning the rule that has been adopted:

a. Nothing in the regulation precludes the election of parent councils; however, the legislative history of the parental involvement provision indicates that such elections should not be mandated from the Federal level.

b. There is no barrier in the regulation to the inclusion on parent councils of parents from attendance areas eligible but not expected to receive title I services, provided parents from the areas to be included in the project "constitute more than a simple majority."

c. The present regulation sufficiently indicates that State educational agencies are required to respond to objections which are raised by the parent council to proposed projects.

Another group of commenters found the requirements concerning the parent council to be too detailed and in some cases inappropriate for their communities. The regulation is designed to give each local educational agency sufficient flexibility to establish a parent council that is appropriate for its school district and to assure that the council has the information and opportunities it needs to be effective. Many suggestions for additional requirements in the regulation were rejected because it was felt that such provisions would reduce the amount of flexibility available to local educational agencies. As the proposed change to the rule indicates State educational agencies are free to prescribe additional requirements which are not inconsistent with the regulation.

3. *Bonus pay for teachers.* The relatively small number of commenters on the rule governing bonus pay for teachers (§ 116.17(p)) generally took exception to the idea that title I funds could be used for such a purpose and not to the specific provision. The rule as stated is based on the statutory amendment permitting title I funds to be used for this purpose and on the legislative history.

4. *Comparability.* The comments received on § 116.26 reflected a variety of concerns. Objections were raised to the failure to require the inclusion of expenditures for salary payments based on length of service (longevity) in computing the comparability of expenditures per pupil for instructional personnel in title I and nontitle I schools. In that respect the proposed provision was said to be discriminatory and an unconstitutional denial of equal educational opportunity. On the other hand, some school officials expressed concern that even with the exclusion of longevity pay they might not be able to redeploy their staffs sufficiently to overcome differences in costs per pupil due to differences in the training of the personnel. Many of these officials and other commenters stated that in their opinion the pupil-staff ratios are adequate indicators of the comparability of services and requested that the instructional expenditures per pupil set forth in the proposed rule be eliminated. Still other commenters asked that the pupil-staff ratios be tempered or eliminated altogether and that comparability be determined primarily or solely on the basis of instructional costs per pupil as set forth in the proposed rule.

The exclusion of salary increments based on length of service as provided in the rule is derived from the legislative history of the comparability provision which, while definite on the Senate side (116 Congressional Record S4361, (daily edition March 27, 1970)) is ambiguous on the House side (116 Congressional Record H2691-93 (daily edition April 7, 1970)). In any event the treatment of this very difficult problem in the proposed rule is not to be taken as reflective of an educational judgment that longevity pay is a factor unrelated to the quality of a teacher's services. While the rule, as proposed, does not require State educational agencies to include longevity pay in determining comparability of per-pupil instructional expenditures, it should be noted that State agencies are permitted to include such pay in additional criteria which they may establish as provided in the last sentence of § 116.26(c) of the rule. Furthermore, the fact that a school district meets the comparability requirements established by this rule would not excuse the district from its responsibility to observe other statutory and constitutional provisions prohibiting discrimination based on impermissible classifications.

After consideration of all of the above comments, it was determined that no changes need be made in the rule with respect to the indicators of the comparability of a title I school with the average of nontitle I schools. A change was made, however, in paragraph (d) so that action is not required to reduce the ratios of pupils to professional staff other than teachers or of pupils to nonprofessional instructional staff when the addition of less than the equivalent of a full-time staff member would be required to achieve comparability.

After consideration of the above-summarized comments, Part 116 of Title 45 of the Code of Federal Regulations is hereby amended as set forth below.

Effective date. As appears from the above summary, the modifications do not involve any changes of a substantial nature from the provisions which were published in the FEDERAL REGISTER on April 27

FOR COMPARABILITY REGULATIONS, SEE § 116.26

and May 4, 1971, as proposed rule making. Accordingly, these regulations shall be effective upon publication in the FEDERAL REGISTER (10-14-71), except for any portions thereof which have become effective by operation of law.

Dated: August 25, 1971.

S. P. MARLAND, Jr.,
U.S. Commissioner of Education.

Approved: October 4, 1971.

ELLIOT L. RICHARDSON,
Secretary of Health, Education, and Welfare.

1. In § 116.1, paragraph (c) is amended to read as follows:

§ 116.1 Definitions.

* * * * *

(c) "Average daily attendance" means (1) average daily attendance in elementary and secondary schools, not beyond grade 12, as determined in accordance with State law and (2) in the case of schools for handicapped children and children in institutions for neglected or delinquent children operated or supported by a State agency, the average number of children under 21 years of age participating per day for the length of a normal school year in an organized program in such schools of instruction which is recognized under State law as furnishing elementary or secondary education, but not beyond grade 12. In the case of handicapped children daily attendance shall be measured by the number of daily hours of participation in such instruction as the State agency determines to be appropriate for children with the particular handicap involved, except that any such instruction for more than 1 hour, but less than 3 hours, a day shall be deemed to constitute a maximum of one-half day of attendance. Time spent primarily in custodial care or medical treatment or therapy cannot be counted in determining attendance. In the case of special instructional services provided by a State agency under contract or other arrangement (such as itinerant, resource room, or other types of part-day or part-week programs) to handicapped children in attendance at public or nonpublic schools, such children may be reported as being in average daily attendance if (i) a statute or official written rule, policy, or other standard applicable to such State agency provides a reliable basis for determining that such State agency, rather than a local educational agency, is directly responsible for providing educational services to such children; and (ii) such State agency's average per pupil contribution to the cost of providing education to such handicapped children exceeds (*a*) the State's average per pupil contribution to the cost of education of handicapped children in educational programs operated by local educational agencies in the State, and (*b*) exceeds one-half of the average per pupil expenditure in that State as defined in section 103(e) of title I, ESEA. For the purposes of this paragraph, a State agency's average per pupil contribution to the cost of providing education to such handicapped children, a State's average per pupil contribution to the cost of education of handicapped children by local educational agencies, and the average per pupil expenditure in a State shall be determined on the basis of data for the same fiscal year.

(20 U.S.C. 241c(a)(5))

* * * * *

2. In § 116.17, paragraph (h) is amended and new paragraphs (n), (o), and (p) are added to read as follows:

§ 116.17 Project covered by an application.

* * * * *

(h) Each application for a grant under Title I of the Act for educationally deprived children residing in a project area shall contain an assurance that the use of the grant funds will not result in a decrease in the use for educationally deprived children residing in that project area of State or local funds which, in the absence of funds under Title I of the Act, would be made available for that project area and that neither the project area nor the educationally deprived children residing therein will otherwise be penalized in the application of State and local funds because of such a use of funds under title I of the Act. No project under title I of the Act will be deemed to have been designed to meet the special educational needs of educationally deprived children unless the Federal funds made available for that project (1) will be used to supplement, and to the extent practical increase, the level of State and local funds that would, in the absence of such Federal funds, be made available for the education of pupils participating in that project; (2) will not be used to supplant State and local funds available for the education of such pupils; and (3) will not be used to provide instructional or auxiliary services in project area schools that are ordinarily provided with State and local funds to children in nonproject area schools.

(20 U.S.C. 241e(a)(3))

* * * * *

(n) Each application by a local educational agency for a grant under title I of the Act shall include specific plans for disseminating information concerning the provisions of title I, and the applicant's past and present title I programs, including evaluations of such programs, to parents and to the general public and for making available to them upon request the full text of current and past title I applications, all pertinent documents related to those applications, evaluations of the applicant's past title I projects, all reports required by § 116.23 to be submitted to the State educational agency, and such other documents as may be reasonably necessary to meet the needs of such parents or other members of the public for information related to the comprehensive planning, operation, and evaluation of the title I program but not including information relating to the performance of identified children and teachers. Such plans shall include provision for the reproduction, upon request, of such documents free of charge or at reasonable cost (not to exceed the additional costs incurred which are not covered by title I funds) or provisions whereby persons requesting such copies will be given adequate opportunity to arrange for the reproduction of such documents.

(20 U.S.C. 214e, 1231d)

(o) (1) Parental involvement at the local level is deemed to be an important means of increasing the effectiveness of programs under title I of the Act. Each application of a local educational agency (other than a State agency directly responsible for providing free public education for handicapped children or for children in institutions for neglected and delinquent children) for assistance under that title, therefore, (i) shall describe how parents of the children to be served were consulted and involved in the planning of the project and (ii) shall set forth specific plans for continuing the involvement of such parents in the further planning and in the development and operation of the project.

(2) Each local educational agency shall, prior to the submission of an application for fiscal year 1972 and any succeeding fiscal year, establish a council in which parents (not employed by the local educational agency) of educationally deprived children residing in attendance areas which are to be served by the project, constitute more than a simple majority, or designate for that purpose an existing organized group in which such parents will constitute more than a simple majority, and shall include in its application sufficient information to enable the State educational agency to make the following determinations:

(i) That the local educational agency has taken appropriate measures to insure the selection of parents to the parent council who are representative (*a*) of the children eligible to be served (including such children enrolled in private schools) and (*b*) of the attendance areas to be included in the title I program of such agency;

(ii) That each member of the council has been furnished free of charge copies of title I of the Act, the Federal regulations, guidelines, and criteria issued pursuant thereto, State title I regulations and guidelines, and the local educational agency's current application; and that such other information as may be needed for the effective involvement of the council in the planning, development, operation, and evaluation of projects under said title I (including prior applications for title I projects and evaluations thereof) will also be made available to the council;

(iii) That the local educational agency has provided the parent council with the agency's plans for future title I projects and programs, together with a description of the process of planning and developing those projects and programs, and the projected times at which each stage of the process will start and be completed;

(iv) That the parent council has had an adequate opportunity to consider the information available concerning the

special educational needs of the educationally deprived children residing in the project areas, and the various programs available to meet those needs, and to make recommendations concerning those needs which should be addressed through the title I program and similar programs;

(v) That the parent council has had an opportunity to review evaluations of prior title I programs and has been informed of the performance criteria by which the proposed program is to be evaluated;

(vi) That the title I program in each project area includes specific provisions for informing and consulting with parents concerning the services to be provided for their children under title I of the Act and the ways in which such parents can assist their children in realizing the benefits those services are intended to provide;

(vii) That the local educational agency has adequate procedures to insure prompt response to complaints and suggestions from parents and parent council;

(viii) That all parents of children to be served have had an opportunity to present their views concerning the application to the appropriate school personnel, and that the parent council has had an opportunity to submit comments to the State educational agency concerning the application at the time it is submitted, which comments the State educational agency shall consider in determining whether or not the application shall be approved.

(3) The State educational agency may establish such additional rules and procedures, not inconsistent with the provisions of this section, as may be reasonably necessary to insure the involvement of parents and the proper organization and functioning of parent councils.

(20 U.S.C. 1231d)

(p) An application for a grant for a project under title I of the Act may include, as a part of the applicant's program, provision for the payment of bonuses to teachers in a limited number of schools serving attendance areas with exceptionally high concentrations of children from low-income families. For the purposes of this paragraph, the term "teacher" means a person holding a teaching certificate in the State. Such a person is regarded as a teacher only to the extent that he has a regular instructional assignment and only to the extent that he is taken into account in the computation of pupil-teacher ratios in the State. The eligibility of teachers for such bonuses may be made subject to such conditions, including the completion of prescribed courses of special training, as may be imposed by the local educational agency with the approval of the State educational agency. Such bonuses must be reasonable in amount but must be deemed by the approving State educational agency to be sufficient to attract to, or retain at, such schools the teachers best qualified to help meet the special educational needs of the educationally deprived children to be served by the program of that agency. A project application that includes provision for the payment of teacher bonuses must demonstrate that the applicant's regular salary schedule has not attracted or has not retained sufficient numbers of teachers of high caliber in the area in which the teacher bonus provision is to be made applicable. It must also demonstrate how the local educational agency plans to recruit, hire, provide in-service training to, and evaluate all teachers who will receive bonuses, and how such teachers will serve as an integral part of the title I program. The continuation of the payment of teacher bonuses by a local educational agency beyond a 2-year period shall be conditioned upon a demonstration in project applications for subsequent years that bonus payments in the school district have in fact been effective in attracting and retaining teachers of high caliber and that such teachers have significantly contributed to improving the performance of educationally deprived children. For that purpose, the State educational agency must assume a special responsibility for monitoring and evaluating teacher bonus components of programs in the light of specific measurable goals and must collect and maintain data on the extent of the use and the effectiveness of such teacher bonus components of programs under title I of the Act.

(20 U.S.C. 241e(a)(1))

§ 116.18 [Amended]

3. In § 116.18, paragraph (f) is revoked.

4. A new § 116.26 is added, reading as follows:

§ 116.26 Comparability of services.

(a) A State educational agency shall not approve an application of a local educational agency (other than a State agency directly responsible for providing free public education for handicapped children or for children in institutions for neglected or delinquent children) for the fiscal year 1972 and subsequent fiscal years unless that agency has filed, in accordance with instructions issued by the State educational agency, information as set forth in paragraphs (b) and (c) of this section upon which the State educational agency will determine whether the services, taken as a whole, to be provided with State and local funds in each of the school attendance areas to be served by a project under title I of the Act are at least comparable to the services being provided in the school attendance areas of the applicant's school district which are not to be served by a project under said title I. For the purpose of this section, State and local funds include those funds used in determinations of fiscal effort in accordance with § 116.45.

(b) The State educational agency shall require each local educational agency, except as provided under paragraph (d) of this section, to submit data, based on services provided from State and local expenditures for subparagraphs (2) through (7) of this paragraph, for each public school to be served by a project under title I of the Act and, on a combined basis, for all other public schools in the district serving children in corresponding grade level, which schools are not served by projects under that title. Such data shall show (1) the average daily membership, (2) the average number of assigned certified classroom teachers, (3) the average number of assigned certified instructional staff other than teachers, (4) the average number of assigned noncertified instructional staff, (5) the amount expended for instructional salaries, (6) the amount of such salaries expended for longevity pay, and (7) the amounts expended for other instructional costs, such as the costs of textbooks, library resources, and other instructional materials, as defined in § 117.1(i) of this chapter; and such other information as the State educational agency may require and utilize for the purpose of determining comparability of services under this section. The data so provided shall be data for the second fiscal year preceding the fiscal year in which the project applied for under said title I is to be carried out unless a local educational agency finds that it has more recent adequate data from the immediately preceding fiscal year which would be more suitable for the purpose of determining comparability under this section.

(c) The data submitted by the local educational agency based on services provided with State and local expenditures, shall, in addition to the information required under paragraph (b) of this section, show for each public school serving children who are to participate in projects under title I of the Act and for the average of all public schools in the school district serving corresponding grade levels but not serving children under title I of the Act, on the basis of pupils in average daily membership;

(1) The average number of pupils per assigned certified classroom teacher;

(2) The average number of pupils per assigned certified instructional staff member (other than teachers);

(3) The average number of pupils per assigned noncertified instructional staff member;

(4) The amounts expended per pupil for instructional salaries (other than longevity pay); and,

(5) The amounts expended per pupil for other instructional costs, such as the costs of textbooks, library resources, and other instructional materials.

The services provided at a school where children will be served under said title I are deemed to be comparable for the purposes of this section if the ratios for that school determined in accordance with subparagraphs (1), (2), and (3) of this paragraph do not exceed 105 percent of the corresponding ratios for the said other schools in the district, and if the ratios for that school determined in accordance with subparagraphs (4) and (5) of this paragraph are at least 95 percent of the corresponding ratios for said other schools. State educational agencies may, subject to the approval of the

Commissioner, propose and establish criteria, in addition to those specified in this section, which must be met by local educational agencies.

(d) The State educational agency shall not approve project applications under title I of the Act for fiscal year 1972 unless the applicant local educational agency has submitted the data required by paragraphs (b) and (c) of this section. Such data must be submitted to the State educational agency no later than July 1, 1971, and July 1 of each year thereafter. In the case of local educational agencies the data for which indicate a failure to meet the standards for comparability described in this section, such applications must indicate how such comparability will be achieved by the beginning of fiscal year 1973. Applications for fiscal year 1973 and succeeding fiscal years shall not be approved unless the State educational agency (1) finds, on the basis of the data submitted, that the local educational agency has achieved comparability (as described in this section) and has filed a satisfactory assurance that such comparability will be maintained, or, (2) in the case of a local educational agency the data for which indicate a failure to meet such standards of comparability, receives from that local educational agency information with respect to projected budgets, staff assignments, and other pertinent matters showing that comparability will be achieved by the beginning of that fiscal year, together with a satisfactory assurance that such comparability will be maintained during the period for which such application is submitted. Notwithstanding the foregoing provisions no action shall be required of any local educational agency concerning the achievement of comparability with respect to subparagraphs (2) and (3) of paragraph (c) of this section if less than the equivalent of a full time staff member would be required to achieve such comparability.

(e) An agency which has an allocation of less than $50,000 for the fiscal year under parts A, B, and C of title I of the Act, and which is operating schools where children are not to be served under that title shall file a satisfactory assurance that it will use its State and local funds to provide services in its schools serving children who are to participate in projects under that title, which services are comparable to the services so provided in these schools serving children in corresponding grade levels which are not to be served by a project under that title. Such an agency shall also file the data required by paragraph (b) (1), (2), (3), and (4) of this section and the data required by paragraph (c) (1), (2), and (3) of this section.

(f) The requirements of this section are not applicable to a local educational agency which is operating only one school serving children at the grade levels at which services under said title I are to be provided or which has designated the whole of the school district as a project area in accordance with § 116.17(d).

(20 U.S.C. 241e(a)(3))

[FR Doc.71-14841 Filed 10-13-71;8:45 am]

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APPENDIX C

Tele copy.
D-R-A-F-T

C-1

FOREWORD

This manual on comparability has been designed combining materials collected by the Division of Compensatory Education from State and local educational agencies. Its purpose is to aid State educational agencies in providing technical assistance to local educational agencies in collecting, processing, and analyzing data required in determining comparability as defined by ESEA Title I.

The manual contains two elements: A) a model procedure and chart for processing and analyzing expenditure and personnel data, and B) case study information from a sample of local educational agencies that have begun or completed comparability evaluations. These procedures and case studies may be helpful to State agencies as they design individual State procedures applicable for use by local districts.

Further assistance in establishing these or individualized State-designed procedures may be obtained from the Division of Compensatory Education, U.S. Office of Education.

The Division of Compensatory Education wishes to express its appreciation to those State Departments of Education and local educational agencies which cooperated so fully with Mr. Daniel B. Davis, Education Program Specialist, in the development of these materials.

Public Law 91-230, passed by Congress on April 13, 1970 states that each local educational agency receiving Title I funds must submit data indicating that comparable State and local funds do, in fact, go to Title I and non-Title I schools or that the school district outline a plan showing how comparability will be achieved by June 30, 1972.

A memorandum sent to Chief State School Officers by Acting Commissioner T. H. Bell asks for this data by May 1, 1971.

Because many school districts have not, in the past, collected this type of information and have requested help in planning for comparability and in collecting and processing their information, Title I educational specialists have prepared this manual.

It is suggested that in determining comparability, a school district take the following steps:

- Allocate instructional expenditures on a school-by-school basis, as this is crucial for implementing comparability
- Consider revenues from state, local, and P.L. 81-874 sources only
- Do not include Title I personnel or any proportion of salaries paid from Title I funds.
- Compare only those schools of equivalent grade span e.g., each K-6 Title I school with the average for all K-6 non-Title I schools in the district
- Submit a separate analysis for each division of schools

The chart on page 7 is designed to help school districts organize their information on each Title I school and on the average of the non-Title I schools in a systematic manner.

The following instructions explain the procedures for implementing the comparability criteria of this chart.

Column 1

Calculate the number of pupils in Average Daily Membership for all Title I schools listed and for the average of all non-Title I schools of equivalent grade span. ADM is the average number of pupils on the school rolls (present and absent) during the school year.

Column 2

The average number of assigned full time equivalent (FTE) certified classroom teachers paid from state and local funds can be obtained from staff distribution records by school. This classification comprises all teaching services rendered to pupils in the public schools, including teachers of special classes, teachers of exceptional children, teachers of the homebound, and long-term substitute teachers. Day-to-day substitute teachers should not be included.

Column 3

The average number of assigned FTE other certified instructional staff should be available from staff personnel records by school. This classification includes principals, consultants or supervisors of instruction, school librarians, audio-visual personnel, guidance personnel, psychological personnel, and television instructional personnel. If a staff member is assigned to 2 or more schools, his position should be prorated in accordance with the proportion of time that he actually spends with each school.

Column 4

The average number of assigned FTE non-certified instructional staff can also be obtained from staff distribution records on a school-by-school basis. This category includes secretarial and clerical services for the principal's office, for consultants or supervisors, for teachers, school librarians, audio-visual personnel, guidance personnel, psychological personnel, and other such instructional staff. Also included are any assistants or aides to instructional staff other than secretarial and clerical personnel e.g., paraprofessionals.

Column 5

To compute the ratio of pupils to assigned FTE certified classroom teachers, divide column 1 by column 2.

Column 6

To compute the ratio of pupils to assigned FTE other certified instructional staff, divide column 1 by column 3.

Column 7

To compute the ratio of pupils to assigned FTE non-certified instructional staff, divide column 1 by column 4.

Column 8

To calculate the total amount expended for instructional salaries (including increments paid for step increases or other increases for length of service) at each school, compute the sum of the following expenditure accounts in Handbook II, Financial Accounting for Local and State School Systems: 211, 212, 213, 214a, 214b, 214c, 214d, 214e, 215a, 215b, 215c, 215d, 216. Prorate salaries of itinerant personnel counted in columns 2, 3, and 4.

NOTE: Indirect payroll expenses include all contributions by the school district toward fringe benefits for instructional personnel, e.g., medical and health benefits, life insurance, workmen's compensation, retirement funds, etc. These can be determined by summing the following accounts: 810a, 810b, 810c, and 820b.

Column 9

The amount included in expenses for instructional salaries paid solely for length of service can be determined from the districts appropriate salary schedule. Locate each staff member's total salary on the schedule (this is usually contingent upon his educational level and his years of experience). Move up the column for the particular level of formal training to Step 1, the base pay for that level of formal training with 0 years of experience. Subtract this amount from the total salary to arrive at the amount paid solely for length of service without regard to the quality of work.

Column 10

The total amount expended for instructional salaries less the amount paid solely for length of service can be found by subtracting column 9 from column 8.

Column 11

To determine the expense per pupil for instructional salaries, less amounts paid solely on the basis of longevity, divide column 10 by column 1.

Column 12

The expenses incurred for other instructional costs can be found by adding the following expenditure accounts from Handbook II:

220 Textbooks
230a School Library Books
230b Periodicals and Newspapers
230c Audiovisual Materials
230d Other School Library Expenses
240 Teaching Supplies
250a Miscellaneous Supplies for Instruction
250b Travel Expenses for Instruction
250c Miscellaneous Expenses for Instruction

The total of these is the amount expended for other instructional costs.

Column 13

To determine the expense per pupil for other instructional costs, divide column 12 by column 1.

CRITERIA FOR DEMONSTRATING COMPARABILITY

School District _____ Grade Span of Schools Listed _____

Title I Project Schools (List Individually)	1 Number of pupils in ADM	2 Average Number FTE Certified classroom teachers	3 Average Number FTE Other Certified Instructional Staff	4 Average Number FTE Non-Cert. Instructional Staff	5* Ratio of Pupils to FTE Certified Classroom Teachers (Col. 1 ÷ Col. 2)	6* Ratio of Pupils to FTE other Certified Instructional Staff (Col. 1 ÷ Col. 3)	7* Ratio of Pupils to FTE Non-Certified Instructional Staff (Col. 1 ÷ Col. 4)	8 Amount expended for Instructional Salaries (including longevity)	9 Amount expended solely for longevity	10 Amount expended for Instructional salaries less longevity (Col. 8 - Col. 9)	11* Per pupil expense for Instructional salaries less longevity (Col. 10 ÷ Col. 1)	12 Amount expended for other instructional costs	13* Per pupil expense for other instructional costs (Col. 12 ÷ Col. 1)
Average for Non-Title I Project Schools													

*Criteria upon which the SEA shall base its determination of comparability requirement.

APPENDIX D

D-1

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF EDUCATION
WASHINGTON, D.C. 20202

January 4, 1972

Our Reference: LCEA Title I Program Guide # 75
DCD/PSP

MEMORANDUM TO CHIEF STATE SCHOOL OFFICERS

Subject: Report on ESEA Title I Comparability Requirements - OE-4524 under P.L. 89-10, As Amended

1. Purpose. This Program Guide establishes a new reporting requirement for State educational agencies participating in the ESEA Title I Program and transmits for that purpose OE-4524, for use in reporting on the compliance of local educational agencies with comparability requirements.

2. Reference. (a) Section 116.26 of Title I regulations provides the standards and data to be submitted by a local educational agency in order to establish the comparability of the services provided in its Title I schools with the services provided in its non-Title I schools.

3. Cancellation. ESEA Title I Program Guide #57 of February 26, 1970, and the OE Advisory Statement on Development of Policy on Comparability dated September 30, 1970, were cancelled and superseded by the regulations cited in reference (a).

4. Reporting procedure. The enclosed form "Report on ESEA Title I Comparability Requirements - OE-4524" is intended to provide data on the status of reporting on comparability by local educational agencies in each State. The form also includes a request for copies of preselected LEA comparability reports and plans. The information collected will be used by the Office of Education to determine the impact of the current comparability standards, for formulating future Title I program policy, and for providing technical assistance to SEA's in States in which local educational agencies appear to be having problems in meeting the comparability requirements.

5. The first report is due in the Office of Education not later than February 15, 1972. A second report based on data filed with Fiscal 1973 applications will be due by November 15, 1972. Future reports on comparability will depend on the nature of the legislation following the expiration of the current legislation on June 30, 1973.

Please prepare and submit original and two copies of OE-4524, with the required enclosures to: U.S. Office of Education, Division of Compensatory Education, ROB-3, Room 3642, 7th and D Streets, SW., Washington, D.C. 20202.

Thomas J. Burns
Acting Associate Commissioner for
Elementary and Secondary Education

Enclosures

cc: State Title I Coordinators, ESEA

D-2

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF EDUCATION
WASHINGTON, D. C. 20202

FORM APPROVED
O.M.B. NO. 51-R0125

FOR FISCAL YEAR

REPORT ON ESEA TITLE I COMPARABILITY REQUIREMENTS

Under P.L. 89-10 As Amended by P.L. 91-230

STATUS OF LEAs COMPARABILITY REPORTS	NUMBER
1. TOTAL NUMBER OF LEAs THAT PARTICIPATED IN TITLE I PROGRAMS DURING SCHOOL YEAR 1970-71	
2. NUMBER OF LEAs (in item 1) REQUIRED TO REPORT ON COMPARABILITY WHEN REQUESTING FUNDS FOR FISCAL 1972	
3. NUMBER OF LEAs (in item 2) THAT ACTUALLY REPORTED	
4. NUMBER OF LEAs (in item 3) REQUIRED TO SUBMIT A PLAN FOR ACHIEVING COMPARABILITY BY THE BEGINNING OF THE 1972-73 SCHOOL YEAR	
5. NUMBER OF LEAs (in item 4) THAT ACTUALLY SUBMITTED PLANS	

6. SUMMARY OF PROBLEMS ENCOUNTERED AND ACTION TAKEN BY THE STATE EDUCATIONAL AGENCY IN IMPLEMENTING COMPARABILITY REQUIREMENTS.

7. PLEASE ENCLOSE THE FOLLOWING INFORMATION AND MATERIAL:

A. A list of the local education agencies that actually submitted plans with brief statement for each LEA indicating the steps it purposes to take to achieve comparability.

B. One completed copy of the Comparability Report and plans, if any, for the LEAs on the enclosed list. If any, LEAs on this list has not submitted its Comparability Report, please enclose information indicating why such LEA has not done so.

NAME OF STATE EDUCATION AGENCY	SIGNATURE OF SEA TITLE I COORDINATOR	DATE SIGNED

OE FORM 4524, 12/71

APPENDIX E

58

JUN 14 1972

MEMORANDUM TO CHIEF STATE SCHOOL OFFICERS

Subject: ESEA, Title I Comparability Requirements: Applicability of Withholding Provision Beginning July 1, 1972

As you know, the provision for withholding Title I funds for failure to comply with the comparability requirements which Congress added to the law in 1970 becomes applicable July 1, 1972. Consequently, your agency will need to review very carefully the comparability reports local educational agencies will be filing in conjunction with their applications for grants for projects to be initiated after July 1, 1972. Before these applications may be approved by your agency you must find in accordance with Section 141(a)(3)(C) of Title I that

> State and local funds will be used in the district of [the local educational agency] to provide services in project areas which, taken as a whole, are at least comparable to services being provided in areas in such district which are not receiving funds under this title.

The foregoing requirement is implemented by the Title I regulations which in Section 116.26(d) require your agency to make one or the other of the following determinations with respect to the comparability of schools serving attendance areas designated for Title I projects in applications submitted for fiscal 1973:

> (1) ... on the basis of the data submitted, that the local educational agency has achieved comparability (as described in this Section) and has filed a satisfactory assurance that such comparability will be maintained or,
>
> (2) [the local educational agency has supplied] information with respect to projected budgets, staff assignments, and other pertinent matters showing that comparability will be achieved by the beginning of [fiscal year 1973] together with a satisfactory assurance that such comparability will be maintained during the period for which such application is submitted.

Page 2 - Chief State School Officers

I appreciate the efforts your agency has already put into the implementation of this requirement as indicated by your reports and by the sample of local reports you were asked to supply. These reports have been reviewed by my staff and the HEW Audit Agency has conducted a number of on-site investigations to determine the validity of the data.

These early reviews of the first comparability reports indicate a need for improved procedures for compiling the data at the local level and for careful checking by State educational agencies. Also, many local educational agencies with substantial Title I allocations submitted reports showing that some of their Title I schools were not comparable. It seems likely, therefore, that the next comparability reports will also include reports from local educational agencies which have not yet achieved comparability in all their Title I schools. Such a report from a local educational agency must be accompanied with appropriately documented information setting forth specifically the official action it has taken to insure the comparability of those schools in the coming school year. Unless such information is supplied no Title I funds may be approved for that agency for a project to be initiated after July 1, 1972.

For this coming year it is extremely important that the local educational agencies fully understand the requirements and that those LEA's which have not already submitted their reports do so in sufficient time to insure proper State review and, if necessary, corrective action.

I would urge that your agencies provide technical assistance particularly to those applicants that may be having difficulty assembling the necessary data or making the adjustments required to achieve comparability. Following the approval of project applications your agency should also be prepared to monitor local reporting procedures for verifiability and reliability and the performance of any steps required of local educational agencies to insure the comparability of their Title I schools during the coming school year.

As you move forward in this difficult area please let me know how this Office can be of assistance to you. A Program Guide is being developed and will be sent to you shortly in response to a number of questions that have been raised about the determination of comparability under certain conditions.

(Sgd.) S. P. Marland Jr.

S.P. Marland, Jr.
U.S. Commissioner
of Education

cc: State Title I Coordinators, SEMA

cc:Official/Reading/Fairley/ECL/Evans/ECE/Matthews/OGC/OGC/Marland
ECE:DCM:[illegible] Revised 5/[illegible]/72 Downgraded in part by
OE/OGC:LGorinstead[illegible]/05/72 ...ot Controlled

APPENDIX F

APPENDIX F

ADDITIONAL RESEARCH NEEDED

I. Three Separate Pupil-Teacher Ratios--Too Much or Too Little?

An important area of research concerns the necessity of using three staff-pupil ratios to determine comparability. Several districts voiced complaints about the lack of flexibility in personnel hiring caused by the required use of the three criteria. The findings from the preliminary analysis of the eighty districts suggests that none of the three individual ratios was particularly unique and that their combination may not disturb the picture. It is presumed, however, that substantial thought went into the development of these criteria, and therefore the reasoning behind the selection of three staff ratios should be articulated and tested before the three sophisticated ratios are discarded for a rather gross measure, such as "total staff expenditures per pupil."

II. Longevity Pay

Perhaps the biggest controversy surrounding HEW's initial issuance of the comparability regulations on April 27, 1971 was the

issue of whether or not longevity pay for teachers should be included, for the purposes of determining comparability, in the computation of per-pupil expenditures. After what appeared to be a rather critical examination of the pros and cons of this issue, it was decided to exclude such additional expenditures:

> The exclusion of salary increments based on length of service as provided in the rule is derived from the legislative history of the comparability provision which, while definite on the Senate side (116 Congressional Record S4361, (daily edition March 27, 1970)) is ambiguous on the House side (116 Congressional Record H2691-93 (daily edition April 7, 1970)). In any event the treatment of this very difficult problem in the proposed rule is not to be taken as reflective of an educational judgment that longevity pay is a factor unrelated to the quality of a teacher's services. While the rule, as proposed, does not require State educational agencies to include longevity pay in determining comparability of per-pupil instructional expenditures, it should be noted that State agencies are permitted to include such pay in additional criteria which they may establish as provided in the last sentence of §116.26(c) of the rule. Furthermore, the fact that a school district meets the comparability requirements established by this rule would not excuse the district from its responsibility to observe other statutory and constitutional provisions prohibiting discrimination based on impermissible classifications.[1/]

In studying the data from the eighty districts, an effort was made to determine the extent to which the exclusion of longevity allowed schools

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[1/] See comments preceding the final comparability regulations, Appendix B-1.

to be comparable when they would not have been if the longevity had been included. It had been assumed that the exclusion of longevity would substantially enhance the prospects for achieving comparability in any given school. This assumption was based on the widely-held belief that teachers with long tenure typically were assigned to high expenditure schools located in white, middle-class neighborhoods.

Surprisingly, the study did not bear out this assumption in any dramatic way. As the chart on pp. 18 through 22 demonstrates, if U.S.O.E. were to include longevity pay in the computations for comparability, the percentage of non-comparable schools would increase only 4 percentage points--from 34.23% to 38.35%.

It seems clear that more study is needed in this important policy area.

III. Decentralized Districts

Several of the eighty districts studied have established decentralized

sub-districts. At least one city, Philadelphia, prepared its comparability report so that comparisons were only made within these sub-districts. It would be useful to determine whether some sub-districts receive more state and local resources per pupil than others. Additionally, correlations should be run on the relationships between the level of per-pupil expenditures (from state and local sources) in these sub-districts and their respective incidences of poverty, their racial composition, and their level of educational achievement.

IV. Desegregated Districts

Another fruitful area of research would be to study school districts which have converted to a unitary system of school organization. The question to be answered is does desegregation itself achieve comparability? Desegregated school systems face special problems in identifying Title I schools and targeting Title I resources. The special comparability problems of these school districts ought to be examined.

V. State Compensatory Programs

A fifth area of study involves state compensatory funds.[2] The question is whether these funds should be included in comparability computations. According to U.S.O.E.'s comparability instructions they should be included.[3] However, this may have the effect of undermining the purpose of the state's program. This problem was recently pointed out by an HEW audit on New York City's comparability data. That data, which showed a high non-comparability rate, did not include the state's compensatory education funds. The audit determined that if the state's compensatory funds were included, it "would have shown a better comparability posture" than was reported.[4]

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[2] The following states have compensatory education funds: California, Colorado, Connecticut, Delaware, Hawaii, Michigan, Nebraska, New York, Ohio, Pennsylvania, Rhode Island, Washington, and Wisconsin.

[3] The September 18, 1970 statement on comparability provides that funds from state sources include "all funds which the LEA recieves from public sources within its state" (see Appendix A, p. 8).

[4] HEW Audit Agency, Audit Control No. 20134-02, p. 35.

To understand the problem raised by the New York audit, the following illustration may be helpful. Suppose a state has a compensatory program in which it provides $200 per pupil to selected schools. Suppose further that in a given district which has only four schools, the following allocations are made:

	Expenditures/Pupil			
	State & Local funds excluding State comp. funds	State comp. funds	Title I funds	Total
School A	$600			$600
School B	$400	$200		$600
School C	$400	$200	$300	$900
School D	$600		$300	$900

School A's enrollment is composed primarily of white middle-class children who do not suffer from educational disadvantages. Schools B, C, and D, on the other hand, have children who come predominantly from poor families, and who are educationally disadvantaged. Due to the concentration requirements, Schools C and D were

selected for Title I funds. Schools B and C were selected for state compensatory funds to bring their total resources (not including Title I funds) up to that of the other schools.

According to the current comparability instructions, it appears that this district would be comparable. Yet, clearly this means that the state funds do not achieve their intended effect. If they were not included, the following picture might emerge:

	Expenditures/Pupil			
	State & Local funds less State comp. funds	State comp. funds	Title I funds	Total
School A	$500			$500
School B	$500	$200		$700
School C	$500	$200	$300	$1000
School D	$500		$300	$800

This is certainly a subject that warrants extensive additional research.

VI . A Closer Look at Non-Title I Schools

One of the most interesting questions to arise from this analysis deals with the effects of the Title I comparability requirements on non-Title I schools. It appears that the current comparability regulations, which require LEA's to report only the averages for the non-Title I schools, may permit a situation where resources are taken from some non-Title I schools and are used to bring Title I schools up to the district-wide average.[5/]

Five of the eighty districts studied submitted school-by-school data for non-Title I schools as well as Title I schools. It was possible, therefore, to contrast the high spending non-Title I schools against low spending non-Title I schools.

The initial evaluation of the comparability reports from these

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[5/] The U.S.O.E. regulatory requirement that averages used for non-Title I schools in computing comparability is inconsistent with the Congressional intent in passing the comparability amendment. The legislative history indicates that each Title I school is to be comparable with each non-Title I school; yet, the Title I regulations require that a Title I school need only be comparable with the average of non-Title I schools.

five districts suggests that in several cases certain non-Title I schools may indeed be bearing more of the burdens of comparability than other non-target schools. These are the schools which are below the district average for the various comparability categories. Not only does this mean that they have fewer resources than other non-Title I schools, but, equally important, they serve to lower the averages against which the Title I schools are compared.

The use of a non-Title I average causes a related problem. Just as it permits non-Title I schools to fall well below the district average, so does it allow other non-Title I schools to have resources far above the district average. In some districts, disparities of this type were found which were quite substantial. In Detroit, for example, some non-Title I schools receive six times as much money per pupil as other Title I schools.[6/]

[6/] Burbank school, a non-Title I school, spends $1,230 for instructional salary less longevity per pupil, while Lincoln school, a Title I school, spends only $240 per pupil.

VII. Investigations of Possible Methods for Checking the Accuracy of the Data

An additional area for further research involves cross-checking other sources of raw data. Although many violations of comparability were disclosed in the preliminary analysis of the eighty districts, the study was conducted on the assumption that the comparability data was accurate and reliable. This assumption, however, proved shaky when a closer look was made of randomly selected districts. In Toledo, for example, it appeared that the comparability data for some Title I schools included Title I expenditures. The comparability regulations are clear on this point: in comparing Title I schools with non-Title I schools all federal money, except impact aid, must be excluded.

In a closer examination of the El Paso comparability data, another possible inaccuracy emerged. By comparing the 1970-71 enrollment statistics in the comparability data with the corresponding enrollment statistics as reported in the 1970 report of the HEW Office

of Civil Rights, it appears that the El Paso school district in preparing its comparability report has somehow managed to understate enrollments for Title I schools and overstate enrollments for non-Title I schools. This would cause per-pupil expenditures to be overstated in the former and understated in the latter schools. If this suspected reporting inaccuracy can be confirmed by further study, it means that the El Paso school district is far more non-comparable than its comparability data shows.

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